

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

PREPARED FOOD PHOTOS, INC., f/k/a ADLIFE)
MARKETING & COMMUNICATIONS CO., INC.,)

Plaintiff,)

v.)

No.
6:24-cv-00351-RRS-DGA

CLYDE'S CHICKEN KING, INC. d/b/a)
CHICKEN KING,)

Defendant.)

AFFIDAVIT OF BEN GARDNER

1. My name is Ben Gardner. I am a Team Lead for Digital Space, a division of HostPapa, an online provider which helps small businesses create and maintain an online presence, such as by creating websites.

2. Our company operates as Hostopia, previously Hostopia, a Deluxe Company.

3. In 2015, under that company name, AT&T contracted with us to create websites for its customers. It was under that arrangement that we came to assist Chicken King in the creation of its website.

4. I was not personally involved on that project. I am able to make the following statements because, after Chicken King told us that it had been sued, I researched our company records to try to find out how its website came to include the fried chicken photo at issue in the case,

5. In 2015, we subcontracted with a company called VSplash, which is based in Hyderabad, to do initial design work on websites and to procure images for that purpose.

6. Our records reflect that, pursuant to that project, VSplash provided five photos that it told us it had licensed from the stock photo site iStock, a subsidiary of Getty Images. VSplash gave us the iStock image names for each of the five photos:

iStock_000011693448XSmall
iStock_000016345131Small
iStock_000031066588_Double
iStock_000036496598_Full
iStock_000043774970_XXXLarge

Our records do not reflect which image went with which photo.

7. We accepted VSplash's word that the photos had been properly licensed.

8. Our company no longer works with VSplash, and we have not had that relationship for several years. As a result, we do not have the ability to press VSplash to cooperate with Chicken King's effort to defend itself by attesting to the licenses it told us had been obtained from iStock. However, I did have access to contact information for three VSplash personnel with whom we worked, and I passed that information on to Chicken King.

Pursuant to 28 U.S.C. § 1746, I hereby
certify that the foregoing is true and correct.
Executed on May 14, 2024.

A handwritten signature in black ink that reads "Ben Gardner". The signature is written in a cursive, flowing style.

Ben Gardner